HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.161 of 2006

1. Manjeet Kaur W/o Balbir Singh
2. Kirandeep Kaur D/o Balbir Singh
   W/o Rajendra Singh
   Both R/o village & Post Samdhana
   P.S. Katra
   District Sahajahanpur, U.P.
3. Amarjeet Singh S/o Gurudeep Singh
   R/o Gurudwara Tilhar By Pass
   P.S. Katra
   District Sahajahanpur, U.P. .....Applicants

Versus

1. State of Uttaranchal
2. Dayal Singh s/o Pooran Singh
   R/o Khali Mohwat
   P.S. Khatima
   District U. S. Nagar .....Respondents

Dated :- 30.03.2006

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the summoning order dated 10.06.2005 passed by the Judicial Magistrate, Khatima, District U. S. Nagar in compliant case No.1094/2005 Dayal Singh Vs. Manjeet Kaur & others under section 380 IPC.

2. Brief facts of the case are that on the respondent No.2-Dayal Singh filed an application under section 156(3) Cr.P.C. before the Judicial Magistrate, Khatima against the present applicants alleging that the marriage was solemnized between the applicant No.2-Kirandeep Kaur and his son Rajendra Singh according to Hindu customs. It was further alleged that his son and daughter-in-law are living their life peacefully. It was further alleged that on 14.09.2005 his 'Samdhan'-Smt. Manjeet Kaur and one-Amarjeet Singh (applicant No.1 & 3 respectively) came to the house to meet his daughter-

in-law. On the next day i.e. 15.9.2004 at about 10a.m. when his wife was working outside the house, both the guest i.e. Smt. Manjeet Kaur and Amarjeet Singh (applicant No.1 & 3 respectively) have committed a theft of Rs.40,000/- cash and 8 Tola Gold ornaments with the help of his daughter-in-law Kirandeep. After committing theft, the applicant No.1 & 3 left the house. It was further alleged that his son and he himself were working in the field at the time of incident and when they returned from the field his wife informed them about the incident. The said application was treated as complaint by the Magistrate. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. The complainant has examined himself under section 200 Cr.P.C. and one-Netra Singh was examined under section 202 Cr.P.C. Netra Singh has stated that a panchayat was convened and before the panchayat it was admitted by the applicants that they have taken the cash as well as the jewellary. It was also decided in the panchayat that the said money and jewellary would be returned in order to settle the dispute amicably. But, the said amount and jewellary were not returned to the complainant. After appreciation of evidence, the learned Magistrate summoned the applicants under section 380 IPC. Feeling aggrieved by this, the applicants preferred the present petition.

3. Learned counsel for the applicants contended that the complainant has filed a false complaint against the applicants. It was further alleged that on 17.1.2005 the applicant No.2-Kirandeep Kaur has filed an application under section 125(1) Cr.P.C. against the son of the complainant. The applicant No.2 has also filed a compliant on 27.8.2005 against her husband-Rajendra Singh, Balvinder Singh, Dharmendra Singh and Dayal

Singh under section 323, 504, 506, 498A IPC & ¾ Dowry Prohibition Act. It was further contended that the Magistrate passed the impugned order without the application of mind and the complaint is false and frivolous. Perusal of the complaint and the statements recorded by the Magistrate reveals that the Magistrate has not made the queries with regard to the litigation pending between the parties. The Magistrate has not put any questions to the witnesses with regard to the proceedings under section 125(1) Cr.P.C. The Magistrate should have put the queries to the witnesses as to whether any case is pending between the parties or not. If he would have put these questions, naturally the witnesses would have stated about the two pending cases. It is also relevant to mention here that the complainant has himself concealed in his complaint that the case(s) are pending between the parties. There are two-three cases are pending between the parties, which shows the strained relations between the parties. It is the duty of the Magistrate to ensure as to whether the case is probable and whether the case is concocted or correct one. The learned Magistrate should have put questions to the witnesses as well as to the complainant. The learned counsel for the applicants has referred the decision of the Hon'ble Apex Court in **M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997(8) S.C. p/705,** in which it has been held as under:

> *"Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate*

summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

4) The above proposition of law clearly emphasizes that the Magistrate, while summoning the accused or taking the cognizance, should scrutinize the evidence and put the questions to all the witnesses as well as to the complainant. The Magistrate should have put the question to the complainant and his witnesses to know the veracity of the incident. It is also admitted case that there are litigations under sections 125(1) Cr.P.C. and sections 323, 504, 506, 498 IPC & ¾ D.P. Act pending in between the parties. The Magistrate should have asked the complainant to produce the documents with regard to the said disputes. He should have put the questions with regard to the pending litigations also. The Magistrate should have seen the corroborative evidence.

6) Therefore, the summoning order dated 10.06.2005 passed by the Judicial Magistrate, Khatima, District U. S. Nagar in compliant case No.1094/2005 Dayal Singh Vs. Manjeet Kaur & others under section 380 IPC is set-aside. The case is remitted back to the learned Magistrate to decide the same afresh in the light of the observations made above.

7) The petition is disposed of accordingly.

(J. C. S. RAWAT, J.)

Dated 30.03.2006

LSR